REMARKS

Favorable reconsideration of this Application and the Office Action of April 14, 2006 are respectfully requested in view of the foregoing amendments and the following remarks.

Claims 1 to 30 remain in this application. Claims 23 to 30 stand withdrawn from consideration as being drawn to a non-elected invention. Elected claims have been amended to state that the flexible pad elements are flexible sheet pad elements as described in the drawings and in the specification at page 16, line 18.

It is noted that this rejection is a final rejection. Making this Action a final rejection is improper. Previously, claims 5, 6, 13, 14, 19 and 20 were not rejected on prior art and in the present Action are rejected for the first time on prior art. It is improper to make a first time prior art rejection of the claims final, particularly where as in the present case there was no substantive amendment to the claims. The prior Amendment Response merely inserted punctuation marks into the certain claims and provided antecedent based language and in no way altered the scope of the claims. Therefore, the USPTO is respectfully requested to withdraw the finality of this April 14, 2006 Office Action.

The rejection of claims 1-22 under 35 U.S.C. 102(e) as being anticipated by Motoi (US 6,584,359) or, in the alternative, as obvious under 35 U.S.C. 103 is respectfully traversed. It is respectfully submitted that the rejection is clearly erroneous and should be withdrawn.

The PTO has based this anticipation rejection on the assertion that the gloves disclosed on the Motoi patent are the flexible pad elements of the present Applicant's claims. Such an assertion is incorrect and erroneous. It is clear form Applicant's specification and disclosure that the gloves of the Motoi reference are not flexible pad elements in the context of the present invention. First, gloves are not pads. The attempt at a strained construction of gloves (in the absence of a hand) to met the definition of a pad is

clearly erroneous and will not stand up to logic, especially since gloves must be used on the hands to have any usefulness for any purpose. Frankly, gloves are not flexible pads. Secondly gloves are not useful in this invention. If gloves are put onto one hands and then that person attempts to put both hands into their mouth in an attempt to put them the gloves on the two sides of all of their that persons gums, this is first of all impractical and one is unable to do so and reach all the gum areas and furthermore one has no free hands to operate the device. In contrast the flexible pads of the present invention enable one to use one hand to hold the two pads on the two sides of all portions of their gums simply using two fingers on one hand to do so, leaving the other hand free to operate and change the settings on the device during use. Thus, the PTO's contention that gloves are flexible pads elements useful in this invention is clearly erroneous and the USPTO is respectfully requested to reconsider and withdraw the Section 102 rejection of the claims.

To make this heretofore discussed distinction between gloves and pads even more evident, the claims have been amended to states that the flexible pads are flexible sheet pads.

The further contention of the USPTO is that it would have been obvious under Section 103 to "modify the electrical conductive elements (of Motoi) with flexible pads since it was known in the art that flexible pads are able to conform to the body or treatment site in order to sufficient (sic) dispense electrical simulation to the treatment area". The conclusion is clearly erroneous in that it presumes that one skilled in the art knows that they want to treat the gums of a patient and is motivated to make such a modification to the device of Motoi. Firstly, the mere fact that the PTO make this argument reinforces Applicant's position, set forth herein before, that gloves are not flexible pads and that gloves are not suitable for Applicant's invention. Secondly, there is absolutely nothing in the Motoi patent disclosure that would lead one to believe that the device of Motoi would have applicability to treat oral hygiene, and that to do so the gloves would need to be replaced with flexible sheet pads. Motoi provide one skilled in the art with no knowledge nor with any motivation to make such modification as proposed by the Examiner. The

absence of such knowledge or motivation means that this rejection is based and grounded solely on the impermissible use of the hindsight gained by the PTO reading Applicant's specification and claims. Therefore, this obviousness rejection is clearly erroneous and the PTO is respectfully requested to withdraw it.

The USPTO recognizes that the device in the Motoi patent is one designed for **cosmetic use**, **not a device designed for treatment of (non-cosmetic) conditions in the mouth of a person**. While the statement of intended use in the device claims is not a structural limitation per se, it places the contextual limitation of the flexible pad elements of the claims that they must be one insertable onto both side of the user's gums and thereby eliminates the possibility of gloves being such flexible pads. Thus, the flexible sheet pad elements distinguish the presently claimed device from that in the Motoi patent, and the functional limitation makes the context of that difference even more evident.

For at least the herein before set forth reasons the USPTO is respectfully requested to (1) withdraw the finality of the new rejection in this Office Action, and (2) withdraw the erroneous rejection of claims 1-22 under section 102 and 103 over the Motoi patent.

It is respectfully submitted that the foregoing is a full and complete response to the Office Action and that all the claims are allowable for at least the reasons indicated. An early indication of their allowability by issuance of a Notice of Allowance is earnestly solicited. Upon the allowance of elected claims 1-22 the USPTO Examiner is given authorization to cancel non-elected claims 23-30 by Examiner's Amendment (without prejudice to Applicant's right to file a divisional application directed to the subject matter of claims 23-30) and pass this application to issue.

Respectfully submitted,

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